



STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

JOHN ELIAS BALDACCI

GOVERNOR

DAVID P. LITTELL

COMMISSIONER

MEMORANDUM

TO: The Board of Environmental Protection

FROM: Amy Lemelin, Bureau of Land & Water Quality, Augusta

RE: Consent Agreement for Brian Martin

DATE: November 19, 2009

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**Statute and Rule Reference:** *The Natural Resources Protection Act*, 38 M.R.S.A. § 480-C, prohibits soil disturbance in and adjacent to a great pond without first obtaining a permit from the Department and prohibits a person from acting contrary to the terms or conditions of a permit.

**Location:** Oakland, Maine

**Description:** In June 2008 staff inspected Mr. Martin's property to determine compliance with Department Order #L-23927-2G-A-N, which allowed a gravel walkway through some wetland to access the shore of Megunticook Lake. Staff found freshwater wetland had been filled in order to extend the path structure in excess of what was permitted under the Natural Resources Protection Act. Rather than terminating at the shoreline, the path was extended in each direction along the shoreline approximately 25 feet in length by 6 feet wide resulting in an additional 300 square feet of freshwater wetland impacts.

**Environmental Issues:** Freshwater wetlands are often noted for their ability to absorb and purify storm water runoff, as well as providing unique wildlife habitat. Wetland areas help protect our water resource from the impacts of thermal pollution and provide nutrient sinks for phosphorus and other pollutants which can degrade the water quality of these aquatic systems.

**Department Recommendation:** The Department recommends acceptance of this Consent Agreement stipulating that Brian Martin pay a monetary penalty of \$1,500.00, which has been paid. All restoration work has been completed and the path has been reduced in size to what was permitted. Gravel fill has been removed and wetland vegetation has re-established in the area that was impacted by the unpermitted filling activity and no long term impacts are anticipated. The penalty is based on the Department's penalty policy reflecting the size of the violation, knowledge of the violator, and that the violation could have been avoided.

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STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

JOHN ELIAS BALDACCI  
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DAVID P. LITTELL  
COMMISSIONER

IN THE MATTER OF:

<b>BRIAN MARTIN</b>	)	<b>ADMINISTRATIVE</b>
<b>OAKLAND, KENNEBEC, MAINE</b>	)	<b>CONSENT</b>
<b>NRPA</b>	)	<b>AGREEMENT</b>
<b>2008-103-L</b>	)	<b>(38 M.R.S.A. § 347-A)</b>

This Agreement, by and among Brian Martin, the Maine Department of Environmental Protection ("Department"), and the Maine Office of the Attorney General ("AG") is entered into pursuant to the laws concerning the Department's *Organization and Powers*, 38 M.R.S.A. § 347-A(1).

The parties agree as follows:

1. Brian Martin, 9164 Wigneil Ext., Suffolk, Virginia, owns a parcel of land on Blake Lane in Oakland, Maine as described and recorded in Book 2169 on Page 256 of the Kennebec County Registry of Deeds.
2. The property described in Paragraph 1 of this Agreement is adjacent to Messalonskee Lake which is a great pond as defined by the *Natural Resources Protection Act*, 38 M.R.S.A. § 480-B(5).
3. On January 2, 2008, the Department granted approval to Brian Martin in Department Order #L-23927-2G-A-N to construct a gravel walkway measuring 6 feet wide by 95 feet long to Messalonskee Lake resulting in a freshwater wetland impact of 570 square feet on the property described in Paragraph 1 of this Agreement subject to a series of standard conditions as follows:
  - A. Standard Condition A of the Standard Conditions of Approval for Department Order #L-23927-2G-A-N states/states in pertinent part: "The granting of this permit is dependent upon and limited to the proposals and plans contained in the application and supporting documents submitted and affirmed to by the applicant. Any variation from these plans, proposals, and supporting documents is subject to review and approval prior to implementation."
4. On June 24, 2008, an inspection of the property described in Paragraph 1 of this Agreement by Department staff revealed that additional freshwater wetland had been filled in excess of what had been permitted. Rather than terminating at the shoreline, the path was extended in each direction along the shoreline approximately 25 feet in length by 6 feet wide resulting in an additional 300 square feet of wetland impact. Brian Martin did not first obtain a permit from the Department for this/these activities. At the time of inspection, the site was stable as the side slopes of the gravel path had been heavily mulched with erosion control mix.

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IN THE MATTER OF:

BRIAN MARTIN  
OAKLAND, KENNEBEC, MAINE  
NRPA  
2008-103-L

) ADMINISTRATIVE  
) CONSENT  
) AGREEMENT  
) (38 M.R.S.A. § 347-A)

5. The activities described in Paragraph 4 of this Agreement constitute the following violations:

- A. By placing fill in a freshwater wetland without first obtaining a permit from the Department, Brian Martin violated the *Natural Resources Protection Act*, 38 M.R.S.A. § 480-C.
- B. By performing or causing to be performed any construction of a permanent structure adjacent to a protected natural resource without first obtaining a permit from the Department, Brian Martin violated the *Natural Resources Protection Act*, 38 M.R.S.A. § 480-C.
- C. By varying from the approved plans and proposals without prior Department review and approval, Brian Martin violated Department Order L#23927-2G-A-N and the *Natural Resources Protection Act*, 38 M.R.S.A. § 480-C.

6. On July 7, 2008, the Department issued a Notice of Violation to Brian Martin regarding the violations described in Paragraphs 4 and 5 of this Agreement in accordance with 38 M.R.S.A. § 347-A(1)(B).

7. On September 8, 2008, Department staff inspected the property described in Paragraph 1 of this Agreement and determined that all corrective work requested had been completed and the path had been reduced in size to meet what had been permitted. All restoration has been completed to the satisfaction of Department staff.

8. The Department has regulatory authority over the activities described herein.

9. Pursuant to 38 M.R.S.A. § 341-D(6)(C) and 347-A(1)(A)(1), administrative consent agreements must be approved by the Board of Environmental Protection (the "Board") which is part of the Department.

10. This Agreement shall become effective only if it is approved by the Board and the Office of the Attorney General.

11. To resolve the violations referred to in Paragraphs 4 and 5 of this Agreement, Brian Martin agrees to pay the Treasurer, State of Maine, upon signing this Agreement, the sum of one thousand five hundred dollars (\$1,500.00) as a civil monetary penalty.

12. The Department and the Office of the Attorney General grant a release of their causes of action against Brian Martin for the specific violations listed in Paragraphs 4 and 5 of this Agreement on the express condition that all actions listed in Paragraph 11 of this Agreement

IN THE MATTER OF:

BRIAN MARTIN  
OAKLAND, KENNEBEC, MAINE  
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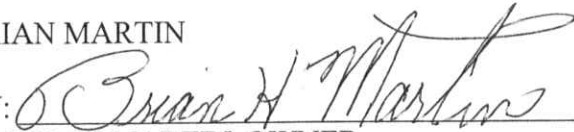
) ADMINISTRATIVE  
) CONSENT  
) AGREEMENT  
) (38 M.R.S.A. § 347-A)

13. The Department and the Office of the Attorney General grant a release of their causes of action against Brian Martin for the specific violations listed in Paragraphs 4 and 6 of this Agreement on the express condition that all actions listed in Paragraph 11 of this Agreement are completed in accordance with the express terms and conditions of this Agreement. The release shall not become effective until this condition is satisfied.

IN WITNESS WHEREOF the parties hereto have executed this Agreement consisting of three (3) pages.

BRIAN MARTIN

BY:

  
BRIAN MARTIN, OWNER

DATE:

8/18/2009

BOARD OF ENVIRONMENTAL PROTECTION

BY:

DATE:

SUSAN M. LESSARD, CHAIR

SEEN AND AGREED TO:  
STATE OF MAINE

BY:

DATE:

MARGARET A. BENSINGER, ASSISTANT ATTORNEY GENERAL